Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-939

DELAWARE STATE COLLEGE, et al.,

Petitioners,

v.

COLUMBUS B. RICKS,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED
DECEMBER 17, 1979

CERTIORARI GRANTED
FEBRUARY 19, 1980

IN THE

SUPREME COURT OF THE UNITED STATES

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THE FOLLOWING OPINIONS, DECISIONS, JUDGMENTS, AND ORDERS HAVE BEEN OMITTED IN PRINTING THIS APPENDIX BECAUSE THEY APPEAR ON THE FOLLOWING PAGES IN THE APPENDIX TO THE PRINTED PETITION FOR CERTIORARI

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Sept. 9, 1977-Plaintiff Ricks' Complaint filed in the United States District Court for the District of Delaware.

Oct. 31, 1977-Answer and Motions to Dismiss filed by all Defendants, except Ehsan Helmy, asserting inter alia application of the pertinent statutes of limitations.

Nov. 7, 1977-Answer and Motion to Dismiss of Defendant Ehsan Helmy filed, asserting inter alia the same grounds asserted by the other Defendants.

Dec. 13, 1977-Motion of Defendants, except Helmy, for judgment on pleadings filed.

Aug. 30, 1978-Opinion and Order of the District Court entered granting Defendants' Motions to Dismiss all counts of the Complaint.

Sept. 11, 1978-Plaintiff Ricks' Motion for Reconsideration by District Court of its Order of Dismissal of Complaint filed.

Oct. 16, 1978-Memorandum Opinion and Order of the District Court denying Plaintiff Ricks' motion for reconsideration entered.

Oct. 24, 1978-Plaintiff Ricks' Notice of Appeal filed.

Sept. 18, 1979-Opinion and Judgment of the Court of Appeals for the Third Circuit entered.

COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DELAWARE

COLUMBUS B. RICKS, Civil Action No. 77-342

Plaintiff,

v.

DLEAWARE STATE COLLEGE, WALTON H. SIMPSON, WILLIAM H. DAVIS, WILLIAM G. DIX, EDWARD W. HAGEMEYER, JAMES C.

HARDCASTLE, DELMA
LAFFERTY, JAMES H.
WILLIAMS, WILLIAM S.
YOUNG, BURT C. PRATT,
LUNA I. MISHOE, PIERRE S.
DuPONT, IV, M. MILFORD
CALDWELL, GEORGE W.
McLAUGHLIN, ROMEO C.
HENDERSON, HARRIET R.
WILLIAMS, ARTHUR E.
BRAGG, ORA BUNCH, EHSAN
HELMY, VERA POWELL, JOHN R.
PRICE, HERBERT THOMPSON,
W. RICHARD WYNDER, ULYSSES
WASHINGTON, JANE LASKARIS,
individually, and in their
official capacities,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

JURISDICTION AND VENUE

1. Plaintiff files this complaint instituting these proceedings and invoking the jurisdiction of this court under 28 U.S.C. §1331 and 28 U.S.C. §1343(3) and (4) to obtain declaratory and injunctive relief, back pay, compensatory damages, punitive damages, and the costs of suit, including reasonable attorneys' fees for injuries caused by defendants' violation

of rights as guaranteed in the First and Fourteenth Amendments to the Constitution of the United States and by federal law, particularly certain Civil Rights Acts found at 42 U.S.C. §1981, §1983, §1985(3) and 42 U.S.C. §2000e(5) et. seq., (hereinafter "Title VII"). Relief is sought pursuant to the aforementioned statutes and to 42 U.S.C. §1988 (as amended P.L. 94-599, October 19, 1976) and 28 U.S.C. §2201 (The Declaratory Judgment Act). The matter in controversy exceeds $10,000, exclusive of interest and costs.

2. This court is also requested to assume pendent jurisdiction over a breach of contract and intentional infliction of mental distress claims arising out of the facts forming the basis of the federal claims over which this court has jurisdiction.

3. The violations of plaintiff's rights as alleged herein were committed within the State of Delaware.

PARTIES

4. Plaintiff, Columbus B. Ricks, a black male of liberian national origin, was employed by Delaware State College, Dover, Delaware from September 1, 1970 to June 1, 1975.

5. Defendant Delaware State College (hereinafter "Del. State") is an educational institution organized as a corporation under the laws of Delaware and is located in the City of Dover. For each of the years since March 24, 1972 it has had at least fifteen (15) employees for each twenty (20) weeks of each calendar quarter and is an employer within the meaning of Title VII.

6. Defendants Walton H. Simpson, William H. Davis, William G. Dix, Edward W. Hagemeyer, James C. Hardcastle, Delma Lafferty, James H. Williams, William S. Young, Burt C. Pratt and Luna I. Mishoe are, and at all times

material hereto, were Trustees of Delaware State College. Defendant Pierre S. duPont, IV is named in his capacity as an ex oficio member of the Board of Trustees (hereinafter "Board of Trustees"). Defendant Trustees, with the exception of Pierre S. DuPont, IV, are sued individually and in their own capacities as Trustees of Del. State College.

7. Defendant Board of Trustees consists of eleven (11) members, six (6) of whom are appointed by the Governor of Delaware and five (5) of whom are elected by the Board of Trustees itself.

8. Defendant Board of Trustees is vested by statute with responsibility for the management, control and conduct of the instructional, administrative and financial affairs of Del. State. As additional Board of Trustees become known to plaintiff, plaintiff reserves the right to add them to the complaint.

9. Defendant Luna I. Mishoe (hereinafter "Mishoe") is and has been, at all times material hereto, the President of Del. State and is responsible for overseeing the instructional, administrative and financial affairs of Del. State. Defendant Mishoe maintains offices at Del. State and is sued individually and in his capacity as President of Del. State as well as in his capacity as an ex oficio member of the Board of Trustees.

10. Defendant M. Milford Caldwell (hereinafter "Caldwell") is and was, at all times material hereto, the Academic Dean of Del. State. He maintains offices at Del. State. For the years 1970 through 1975 defendant Caldwell was responsible for the academic affairs of the college and reported to defendant Mishoe. Defendant Caldwell is sued as an individual and in his former capacity as Academic Dean.

11. Defendant George Washington McLaughlin (hereinafter "McLaughlin") was, from September, 1972 until January, 1975, Chairman of the Department of Education of Del. State. He was responsible for the administration of his department and reported to defendant Caldwell. Throughout that time he resided in the State of Delaware and maintained offices at Del. State. Defendant McLaughlin is sued as an individual and in his former capacity as Chairman of the Department of Education.

12. Defendants Harriet R. Williams, Herbert Thompson, Ulysses S. Washington, Jane Laskaris and W. Richard Wynder are members of the faculty of Del. State. They were members of the Committee on Promotions and Tenure for the academic year 1973. (hereinafter "1973 Committee").

13. Defendants Harriet R. Williams, Romeo C. Henderson, Arthur E. Bragg, Ora

Bunch, Ehsan Helmy, Vera Powell and John R. Price were members of the Committee on Promotion and Tenure for the academic year 1974. (hereinafter "1974 Committee")

14. The members of the 1973 and 1974 Committees are sued individually and in their capacites as members of those committees. As additional names of committee members become known to plaintiff, plaintiff reserves the right to add them to the complaint.

15. Defendant Romeo C. Henderson (hereinafter "Henderson") was, in the academic years 1970, 1971 and 9172 Acting Chairman of the Department of Education and maintained offices at Del. State. In his capacity as Acting Chairman he was responsible for the administration of the Department of Education and reported to defendant Caldwell. Defendant Henderson

is sued in his individual and in his former capacity as Chairman of the Department of Education.

16. All parties hereto with the exception of plaintiff and defendant Helmy are americans.

17. Defendants have been and continue to act under color of state law in that Del. State is a corporation whose activities are so connected with those of the State of Delaware as to constitute state action for purposes of 42 U.S.C. §1983. Other named defendants are present or former employees of Del. State.

FACTS

18. On or about September 1, 1970 plaintiff was hired by defendant Del. State through defendants Caldwell and Mishoe as a Professor of Education in the Department of Education and Coordinator of Science Education.

19. On or about September 1, 1970 plaintiff was appointed by defendant Del. State to the additional position as Director of the UPSTEP program at Del. State, a federally funded program for the instruction of teachers of Science Education in the State of Delaware. Additional compensation was to be paid by defendant Del. State to plaintiff for performing the duties of this position. Said compensation was not paid in any of the years 1970 through 1975.

20. On or about December, 1970, plaintiff was appointed to the additional position of Component Coordinator of the Del-Mod program at Del. State. Additional compensation was to be paid by defendant Del. State to plaintiff for performing the duties of this position. Said compensation was not paid in any of the years 1970 through 1975.

21. Under the terms of plaintiff's appointment to the faculty of Del. State he was to be considered for tenure after his second year of instruction at Del. State.

22. On January 11, 1971 and November 15, 1971 plaintiff was evaluated by defendant Henderson and found to be performing in such a manner as to receive positive evaluations. Said evaluations were concurred in by defendant Caldwell.

23. On or about February, 1972, defendant Henderson informed plaintiff that though he wanted to recommend plaintiff for tenure, because of defendant Caldwell's instructions to defendant Henderson to recommend against granting plaintiff tenure and contract renewal and to dismiss plaintiff, defendant Henderson compromised and recommended that plaintiff be retained and reconsidered for tenure in 1973.

24. Defendant Del. State failed to consider plaintiff for tenure in 1972 in accordance with its contract of employment with plaintiff.

25. On or about March 1, 1973 plaintiff was evaluated by the department Chairman, defendant George Washington McLaughlin and recommended for tenure.

26. Though defendant Caldwell concurred in the March 1, 1973 recommendation of plaintiff for tenure, defendant Caldwell thereafter, on or about March 21, 1973, in violation of established college procedures, met with the defendant McLaughlin and defendant 1973 Committee and coerced defendants McLaughlin and the 1973 Committee to deny plaintiff tenure. Said coercion was concealed from plaintiff.

27. Though defendant McLaughlin recommended plaintiff to the 1973 committee, that committee denied plaintiff

tenure on March 21, 1973, but recommended that he be reconsidered for tenure in 1974, and if denied tenure then he be given a terminal contract.

28. Plaintiff was not provided in advance with the reasons for denial of tenure, nor given the opportunity to present a response to those reasons. Said reasons were concealed from plaintiff.

29. Throughout the years 1970 to 1975 defendants McLaughlin, Caldwell and Del. State, through its agents McLaughlin or Caldwell, engaged in an ongoing pattern of harrassment and abuse of the plaintiff in the following manner, including but not limited to the following:

a. Falsely and maliciously accusing him of being a poor teacher.

b. visiting plaintiff's classes and informing his students therein assembled that no matter what grades plaintiff awarded them, none would fail.

c. pressuring plaintiff to change grades of students in his classes.

d. interfering with plaintiff's performance of his duties as Coordinator of Science Education and Director of UPSTEP.

e. continuing to refuse to allow plaintiff to teach summer school and night school.

f. threatening plaintiff with bodily harm.

g. urging plaintiff to resign because they did not want him to teach at Del. State.

h. interfering with his method of instruction of the students in his classes.

i. employing an american in the Department of Education in July, 1973, with fewer qualifications and less experience for the job of Component Coordinator, and assigning him to teach

courses in summer school that plaintiff was more qualified to teach, had originally been hired to teach and had made preparation to teach.

j. on or about October, 1974 removing plaintiff from teaching responsibility for courses which he had been assigned to teach and replacing him with a less qualified american.

k. paying the same wage from and after September, 1973 to an american with fewer qualifications and less experience and less professorial rank than plaintiff, while denying plaintiff wages commensurate with his experience and duties and with those of other full professors and which plaintiff was, owed under his contracts.

l. denying plaintiff books and other instructional materials necessary for the conduct of his classes and performance of his other duties.

30. Though plaintiff performed his duties in 1973 and 1974 as he had in the academic years 1970, 1971 and 1972 when he received favorable evaluations and/or recommendations for tenure, defendants McLaughlin and Caldwell recommended to the defendant 1974 Committee that tenure be denied.

31. On February 21, 1974 the defendant 1974 Committee requested defendant McLaughlin to appear before it to explain his recommendation against tenure.

32. Though defendant McLaughlin appeared and presented his position, said position was based on information which was known by him to be false or which was without documentation, plaintiff was not afforded an opportunity to know the reasons set forth by defendant McLaughlin, nor was he provided an opportunity to present his position with respect to those

charges prior to the 1974 Committee's decision denying tenure. Said reasons were concealed from plaintiff.

33. The 1974 Committee denied plaintiff tenure on February 21, 1974 and recommended the award of a terminal contract to plaintiff.

34. On or about March 30, 1974 plaintiff petitioned defendant Mishoe to reconsider the denial of tenure. Though defendant Mishoe knew of defendant 1974 Committee's failure to provide plaintiff with notice of the reasons that his tenure was opposed by defendants McLaughlin and Caldwell and an opportunity for plaintiff to present his position with respect to those reasons, as well as the conduct of defendants Caldwell and McLaughlin during the course of plaintiff's employment at Del. State, he failed to respond to plaintiff's request for hearing and relief, and in fact advised plaintiff that

a hearing was unnecessary because he had decided to affirm the denial of tenure.

35. On or about March, 1974 plaintiff petitioned the defendant Board of Trustees for a hearing on plaintiff's denial of tenure.

36. On or about April, 1974 the Board confirmed the denial of tenure to plaintiff.

37. On or about June 26, 1974 the defendant Board of Trustees notified plaintiff of his terminal contract to conclude on June 30, 1975.

38. On or about May, 1974 a post-denial of tenure hearing was held by the Educational Policy Committee of defendant Board.

39. By letter dated September 12, 1974 the Board notified plaintiff that it would not reverse the February 21, 1974 denial of tenure. Said action by the defendant Board of Trustees was allegedly

based on a review of plaintiff's evaluations for the academic years 1971, 1972, 1973 and 1974.

40. On or about December 11, 1974 during the course of a meeting in his office defendant McLaughlin physically attacked plaintiff.

41. On or about January 30, 1975 defendant McLaughlin was convicted of assault on plaintiff in a criminal proceeding. Said conviction was based on the conduct of defendant McLaughlin that occurred on December 11, 1974.

42. On or about January 15, 1975 defendant Mishoe reconfirmed the decision of the defendant Board of Trustees of September 12, 1974.

43. On or about February 5, 1975 defendant Caldwell permitted defendant McLaughlin, who had assaulted plaintiff to evaluate plaintiff's performance. Defendant Caldwell concurred in said

evaluation. Said evaluation of February 5, 1975 was wilfully and maliciously given and false in its material respects.

44. Notwithstanding a favorable evaluation on or about January 30, 1975 of plaintiff by the Acting Chairman of the Department of Education who replaced defendant McLaughlin on December 12, 1974, defendant Mishoe failed or refused to inquire into the conduct of defendant McLaughlin, whom he had removed from the position of Department Chairman, into the conduct of defendant Caldwell which plaintiff had callenged as violative of his rights. Mishoe reconfirmed the September 12, 1974 decision of the defendant Board of Trustees.

45. Though defendant Mishoe was present at that hearing on January 30, 1976, he took no action to reinvestigate the plaintiff's earlier complaints to him of the conduct of defendant McLaughline

with respect to plaintiff's 1974 tenure denial, and further defendant Mishoe thereafter relied on that evaluation of plaintiff by defendant McLaughlin in not reconsidering plaintiff's subsequent requests from and after January 30, 1975 for tenure.

46. On or about April 7, 1974, plaintiff filed a charge of discrimination based on national origin with the Equal Employment Opportunity Commission (a copy of said charge is attached hereto as exhibit "A").

47. On or about July 6, 1977, the United States Department of Justice issued a notice of right to sue to plaintiff. (A copy of said notice is attached hereto as exhibit "B").

48. Plaintiff was discharged effective June 1, 1975.

CLAIMS FOR RELIEF

Paragraphs one through forty-eight of this complaint are incorporated herein and made part of Counts I through VI as fully stated herein.

COUNT I

The actions of the defendants violated plaintiff's First Amendment rights in that their actions were intended to and did in fact punish plaintiff for his exercise of freedom of speech, association, inquiry and his academic freedom.

COUNT II

The actions of the defendants denied plaintiff his right to be free from employment discrimination in violation of 42 U.S.C. §1981, §1983 and §2000e(5) in that defendants treated plaintiff differently from other faculty members because of his national origin.

COUNT III

The actions of defendants denied plaintiff his right not to be deprived of property or liberty without due process of law in that defendants actions were:

a. arbitrary and capricious and based on unlawful and irrevelant criteria.

b. made without affording him notice of charges and an opportunity to a hearing prior to his initial denials of tenure.

c. based on criteria which were unlawful and which differed from that uniformly applied to other faculty employed by Del. State.

COUNT IV

The defendants Mishoe, Caldwell, McLaughlin, Henderson, Board of Trustees, 1973 and 1974 Committees conspired against plaintiff to deprive him of his civil rights in violation of 42 U.S.C. §1985(3).

COUNT V

The actions of defendants repeatedly wilfully and maliciously breached its employment contracts with plaintiff.

COUNT VI

The actions of the defendants intentionally inflicted emotional and mental distress on plaintiff.

PRAYER FOR RELIEF

Plaintiff requests that this court:

1. Grant a jury trial on all issues in this case.

2. Declare that defendants have violated plaintiff's constitutional and statutory rights.

3. Reinstate plaintiff to his position as Professor of Education and Coordinator of Science Education.

4. Grant plaintiff tenure and all rights attendant thereto effective September 30, 1972.

5. Expunge from records maintained by defendants any and all adverse comments or references to plaintiff as to facts forming the basis of the allegations set forth above.

6. Enjoin defendants from referring to the incidents in this complaint or considering them when providing plaintiff with a reference for any future employment.

7. Award plaintiff back pay, including retirement, and other benefits to which he is entitled.

8. Award plaintiff compensatory damages resulting from defendants' violation of plaintiff's rights.

9. Award plaintiff punitive damages for defendants' wilful and malicious conduct in the amount of three million dollars.

10. Award plaintiff attorneys' fees and costs in this action.

11. Award plaintiff such other relief as this court deems necessary.

RESPECTFULLY SUBMITTED,

/s/ Judith E. Harris
JUDITH E. HARRIS
DONA S. KAHN
Attorneys for plaintiff

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P.O. Box 2202
1102 West Street
Wilmington, DE 19801

Of Counsel:

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EXHIBIT "A" TO THE COMPLAINT

See Appendix of Appellant in the United States Court of Appeals for the Third Circuit portion of record at A-18.

EXHIBIT "B" TO THE COMPLAINT

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D.C. 20530

Address Reply to the
Division indicated
and Refer to Initials and Number
SDS:SJF:mal
DJ 169-15-8

CERTIFIED MAIL

Mr. Columbus B. Ricks
337 McArthur Drive
Dover, Delaware 19901

RE: EEOC Charge Against Delaware State College
No. 003-51844-6

Dear Mr. Ricks:

The Civil Rights Division has completely reviewed the file referred to us by the Equal Employment Opportunity Commission (EEOC) in its investigation of your charge of discrimination, and we have determined that we will not file suit in this particular matter against the respondent. This should not be taken to mean that the United States has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation on your case was unsuccessful by the EEOC. You are further notified that you have the right to institute a civil action under Title VII of the Civil Rights

Act of 1964, as amended, 42 U.S.C. §200e, et. seq., against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

-2-

Therefore, you should consult an attorney of your own choosing at your earliest convenience. If you are unable to locate an attorney, you may wish to contact the EEOC, or apply to the Federal District Court in your area, since that court may appoint an attorney in appropriate circumstances.

We are returning the files in this matter to the EEOC's District Office. If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please feel free to contact the EEOC office handling your charge, whose address is listed below.

Sincerely,

DREW S. DAYS, III
Assistant Attorney General
Civil Rights Division

BY: /s/ Samuel J. Flanagan
Samuel J. Flanagan
Attorney
Education Section

cc: Mr. Walter Dickerson
Director, EEOC
Baltimore District Office
Rotunda Bldg. - Rm. 210
711 W. 40th Street
Baltimore, MD 21211

ANSWER OF DEFENDANTS EXCEPT
DEFENDANT EHSAN HELMY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

COLUMBUS B. RICKS,	*	C.A. No. 77-342
	*	
Plaintiff,	*	
	*	
v.	*	
	*	ANSWER
DELAWARE STATE	*	
COLLEGE, et al.,	*	
	*	
Defendants.	*	

COMES NOW the Defendants, above mentioned excepting the Defendant Ehsan Helmy, by and through their attorneys, Schmittinger and Rodriguez, P.A. and answer Plaintiff's Complaint as follows:

1. Denied that any of Plaintiff's constitutional rights were violated or that any federal laws were violated and

further denied that Plaintiff is entitled to any relief or remedy alleged in this paragraph. Admitted that the jurisdictional statutes cited by Plaintiff have applicability to the causes of action alleged in this Complaint, excluding any claim under 42 USC §2000e. Defendants are without sufficient information or knowledge to form a belief as to the truth of Plaintiff's averment concerning the matter in controversy exceeding $10,000 exclusive of interest and costs. Remaining allegations of this paragraph are admitted.

2. Denied that Defendants violated any of Plaintiff's rights. The remainder of this paragraph is admitted.

4. Admitted that Plaintiff was employed by Delaware State College of Dover, Delaware for five consecutive academic years commencing with the academic year of September 1, 1970 to June 30, 1971 and concluding with the

fifth academic year September 1, 1974 to June 30, 1975. All other allegations of this paragraph are denied.

5. Admitted that Delaware State College is an educational institution organized as a corporation under the laws of the State of Delaware and is located in the City of Dover. Further admitted that for each of the years since March 24, 1972, Delaware State College has had at least fifteen employees for each twenty weeks of each calendar quarter. Defendants are without sufficient information or knowledge to form a belief as to the truth of the remaining averments of this paragraph.

6. Denied that Defendant Pierre S. DuPont, IV, as an ex officio member of the Board of Trustees of Delaware State College was such at any and all times material to this Complaint. It is further denied that Luna I. Mishoe was a regular

member of the Board of Trustees of Delaware State College. Rather, Defendant Mishoe was an ex officio member of this Board. The remaining averments of this paragraph are admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Defendant McLaughlin held the position of Chairman of the Department of Education from September 1972 until December 18, 1874 only. The remaining averments of this paragraph are admitted.

12. Denied that Jane Laskaris was a member of the Committee on Promotions and Tenure for the academic year 1972-1973. The remainder of this allegation is admitted, however, Herbert Thompson did not participate in any decicions concerning promotions and tenure for this academic year due to his failure to attend such a meeting.

13. Denied that Harriet R. Williams was a member of the Committee on Promotion and Tenure for the academic year 1973-1974. Admitted that the remaining persons were members of this committee, however, Romeo C. Henderson was absent from any meeting that considered promotion and/or tenure of any and all faculty members for the academic year 1973-1974.

14. Admitted.

15. Denied that Romeo C. Henderson was acting chairman of the Department of Education of Delaware State College in the academic year 1972-1973. Assuming that the Plaintiff is referring to the academic years 1970-1971 and 1971-1972, the remaining averments of this paragraph are admitted.

16. Defendants are without sufficient information or knowledge to form a belief as to the truth of this averment.

17. Denied.

18. Admitted that Plaintiff was hired by Delaware State College on or about September 1, 1970 by entering a contract of employment with this Defendant and executed by Defendant Mishoe on behalf of Delaware State College. Defendant Caldwell made the initial recommendation that this hiring be made.

19. Admitted that Plaintiff had the additional responsibility of being the Director of the Up-Step Program. However, this responsibility was part of the duties accepted by him by his contract for the 1970-1972 school year. The remaining averments of this paragraph are denied.

20. Admitted that Plaintiff was appointed as a Component Coordinator of the Del-Mod Program. However, this responsibility was part of the duties accepted by him in his contract for the academic years 1970-1971 and 1971-1972.

Plaintiff was terminated from this position at the end of the 1971-1972 school year. The remaining averments of this paragraph are denied.

21. Admitted, noting that according to the regulations of Delaware State College, such consideration for tenure is made during the following school year which was done in Plaintiff's case.

22. Admitted that Plaintiff was evaluated during the 1970-1971 school year on or about January 11, 1971 which Defendant Caldwell concurred in. Admitted that Plaintiff was evaluated during the 1971-1972 school year on or about November 15, 1971 however, it is denied that Defendant Caldwell concurred in this evaluation. Defendants are without sufficient information or knowledge to form a belief as to the truth of the remainder of the averments of this paragraph.

23. Denied.

24. Denied, Defendant Delaware State College considered Plaintiff for tenure during the 1972-1973 school year in accordance with its regulations and practices and in a timely and proper fashion.

25. Admitted.

26. Admitted that Defendant Caldwell concurred in the evaluation of March 1, 1973. The remaining averments of this paragraph are denied.

27. Denied that the 1972-1973 Promotions and tenure Committee denied Plaintiff tenure. The remaining averments of ths paragraph are admitted.

28. Denied.

29. Denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

e. Denied.

f. Denied.

g. Denied.

h. Denied.

i. Denied.

j. Admitted that such removal occurred, however, the removal from a class listed as Education 304 was agreed to by Plaintiff.

k. Denied.

i. Denied.

30. Admitted that Defendants McLaughlin and Caldwell recommended through Plaintiff's evaluation of 1973-1974 that the 1973-1974 Committee on Promotions and Tenure recommend that Plaintiff be denied tenure. The remaining averments of this paragraph are denied.

31. Denied that the 1973-1974 Promotions and Tenure Committee initiated this appearance. The remaining averments of this paragraph are admitted.

32. Admitted that Defendant McLaughlin appeared before the 1973-1974 Promotions and Tenure Committee. The remaining averments of this paragraph are denied.

33. Admitted that the 1973-1974 Promotion and Tenure Committee recommended that Plaintiff be denied tenure. The remaining averments of this paragraph are denied.

34. Denied. This matter had been acted upon by the Board of Trustees of Delaware State College prior to any meeting between Plaintiff and Defendant Mishoe on or about March 30, 1974, and accordingly was beyond Defendant Mishoe's control. However, there were specific grievance procedures in existence for Plaintiff to pursue with the Board of Trustees which Defendant Mishoe informed Plaintiff of at this meeting.

35. Denied. No request was made for a hearing before the Board of Trustees prior to April 23, 1974 (See Exhibit "A" attached to ths answer).

36. Denied.

37. Admitted, but this notification clearly stated that this terminal contract would be superseded by any future decision to grant Plaintiff tenure pending the outcome of his grievance procedure hearing (see Defendant's Exhibit "B" attached).

38. Admitted that on or about May 20, 1974, the Board of Trustees through its Educational Policy Committee conducted a grievance hearing concerning Plaintiff pursuant to its grievance procedures and Plaintiff's request of April 23, 1974.

39. Admitted that the Board of Trustees notified Plaintiff of its decision concerning Plaintiff's tenure

status by letter of September 12, 1974. The remainder of the averments found in this paragraph are denied.

40. Admitted that an altercation between these two parties occurred on December 11, 1974, however the same was instigated by the Plaintiff.

41. Admitted.

42. Denied.

43. Denied.

44. Denied.

45. Admitted that Defendant Mishoe was present at a hearing held on or about January 30, 1975 in Justice of the Peace Court No. 7. The remainder of the averments of this paragraph are denied.

46. Defendants are without sufficient information or knowledge to form a belief as to the truth of this averment.

47. Defendants are without sufficient information or knowledge to form a belief as to the truth of this averment.

48. Admitted that Plaintiff's employment relationship with the Defendant, Delaware State College concluded on June 30, 1975.

AFFIRMATIVE DEFENSE I.

49. Any and all sufficiently alleged causes of action constituting a violation of Plaintiff's constitutional, federal, state or common law rights are barred by the statute of limitations.

50. Any and all sufficiently alleged causes of action constituting a violation of Plaintiff's constitutional, federal, state or common law rights are barred by the Doctrine of Laches.

AFFIRMATIVE DEFENSE III.

51. Plaintiff is estopped from asserting any causes of action against

these parties on the basis of a "full-blown" evidentiary grievance hearing provided Plaintiff from May 1974 through July 1974 by the Educational Policy Committee which resulted in the Board of Trustee's decision of September 12, 1974 from which Plaintiff has failed to challenge in any manner or seek any timely judicial review of the same.

AFFIRMATIVE DEFENSE IV.

52. Plaintiff is estopped from asserting any causes of action against these parties relating to the procedures of the Promotions and Tenure Committees due to his unreasonable failure to question their actions before the Faculty Senate of Delaware State College even though Plaitiff was totally and fully aware of such procedures and the actions of these Committees.

AFFIRMATIVE DEFENSE V.

53. Concerning Defendant, McLaughlin, any and all allegations of Plaintiff are barred on the basis of Res Judicata.

AFFIRMATIVE DEFENSE VI.

54. Plaintiff is barred from recovering any monetary judgment against any of the individual defendants on the basis of their official immunity as public officials and a lack of bad faith on their part relating to any matter raised in the complaint.

MOTIONS TO DISMISS PURSUANT TO RULE 12(b)

55. Defendants move pursuant to Rule 12(b)(6) that all of Plaintiff's counts be dismissed on the basis that the Plaintiff has failed to state a cause of action from which he is entitled to relief on the facts pleaded by him due to the statute of limitations.

56. Defendants move pursuant to Rule 12(b)(6) that Count III be dismissed on the basis that the Plaintiff has failed to state a cause of action upon which relief can be granted due to his failure to plead any cognizable property or liberty interest.

57. Defendants move pursuant to Rule 12(b)(6) that Count II and III under 42 USC §1983 be dismissed against Defendant Delaware State College since this defendant is not a person.

58. Defendants move pursuant to Rule 12(b)(6) that Plaintiff's Count II based upon 42 U.S.C. §1981 be dismissed on the basis that Plaintiff has failed to state a cause of action upon which relief can be granted due to the fact that this statute does not apply to discrimination on the basis of national origin.

59. Defendants move pursuant to Rule 12(b)(6) that Plaintiffs Count IV based

upon 42 USC §1985(3) be dismissed on the basis that Plaintiff has failed to state a cause of action upon which relief can be granted since only one corporate entity and its employees could possibly be included in that allegation.

60. Defendant George Washington McLaughlin, moves, pursuant to Rule 12(b)(2) and 12(b)(5), for dismissal of this action against this Defendant for lack of personal jurisdiction over this Defendant, who was neither residing, domiciled or located in Delaware when served with process in this matter, and due to a failure on the part of Plaintiff to comply with Rule 4(f) in serving this Defendant at his place of abode at Route 1, Box 167, Trevillianas, Virginia.

WHEREFORE, the Defendants pray that this Court will dismiss Plaintiff's action

against the Defendants and assess costs of this action against Plaintiff.

SCHMITTINGER & RODRIGUEZ, P.A.

BY: /s/ Nicholas H. Rodriguez
NICHOLAS H. RODRIGUEZ, ESQ.
414 S. State Street
Dover, DE 19901
Attorneys for Defendants

BY: /s/ William D. Fletcher, Jr.
WILLIAM D. FLETCHER, JR., ESQ.

DATED: October 29, 1977

EXHIBIT "A" TO ANSWER

LAW OFFICES
OF
BROWN, SHIELS & BARROS
43 THE GREEN
P.O. DRAWER F
DOVER, DELAWARE 19901

302-734-4766

April 23, 1974

Luna I. Mishoe, President
Delaware State College
Dover, DE 19901

RE: Dr. Columbus B. Ricks

Dear Dr. Mishoe:

I note from your letter of 1 April, 1974 that the meeting between yourself and Dr. Ricks produced no resolution of the problems connected with Dr. Ricks' tenuous position at the College. I therefore request, pursuant to the "Procedure For Presenting Matters To The Eudcational Policy Committee" rule contained on page 32 of the Delaware State College Faculty Handbook (1971 edition) that a meeting of the Educational Policy Committee be held to consider the grievances of Dr. Ricks. As you had advised me on the phone prior to your meeting with Dr. Ricks that you anticipated a failure to resolve his problems, I had not expected otherwise.

The subject to be discussed at the projected appearance before the Educational Policy Committee would include consideration of Dr. Ricks' tenure status over the last two years, the power inequitably wielded by certain individuals at Delaware State College in regard to Dr. Ricks' position, the history of his salary arrangements with Delaware State College since his arrival at the institution as well as the history of the Pre-service Science Teacher Training Program for Delaware State College, all of which matters I understand to have been discussed with you by Dr. Ricks at the meeting held in your office on 27 March, 1974.

In connection with the above projected meeting, it is requested that the committee which made the decision con-

cerning Dr. Ricks' tenure in March of 1973 be present with copies of the complete minutes of that meeting, insofar as such minutes, relevancy being determined by an independent party, relate to Dr. Ricks, as well as the committee which made the decision concerning Dr. Ricks' tenure in March of 1974, likewise accompanied by relevant minutes determined as stated. In this connection it is also requested that the Faculty Senate that reviewed the question of Dr. Ricks' tenure be required to attend.

In addition, in order that a complete determination might be made, it is requested that the following persons be required to attend at the date and time scheduled for the meeting:

1. Glenn D. Sturge, Director of the Media Center.

2. Ralph Hazelton, Component coordinator, Del-Mod Systems.

3. Dr. George W. McLaughlin, Chairman of the Education Department.

4. Dr. M. Milford Caldwell.

Since this meeting will involve matters of grave importance both to Dr. Ricks and to Delaware State College, it is requested that the hearing be held before the entire Board of Trustees and that all proceedings be recorded in such a fashion as to insure complete accuracy and later availability.

Thanking you for your consideration of this request, I am,

Very truly yours,

BROWN, SHIELS & BARROS

/s/ Edward R. McNamara

EDWARD R. McNAMARA

ERM:clk

EXHIBIT "B" TO ANSWER

June 26, 1974

Dr. Columbus Ricks
Delaware State College
Dover, Delaware

Dear Dr. Ricks:

On March 13, 1974, the Board of Trustees of Delaware State College officially endorsed the recommendations of the Faculty Senate in its March 11, 1974 meeting, at which time the Faculty Senate recommended that the Board not grant you tenure.

As we are both aware, the Educational Policy Committee of the Board of Trustees has heard your grievance and it is now in the process of coming to a decision. The Chairman of the Educational Policy Committee has indicated to me that a decision may not be forthcoming until sometime in July. In order to comply with

the 1971 Trustee Policy Manual and AAUP requirements with regard to the amount of time needed in proper notification of non-reappointment for non-tenured faculty members, the Board has no choice but to follow actions according to its official position prior to the grievance process, and thus, notify you of its intent not to renew your contract at the end of the 1974-75 school year.

Please understand that we have no way of knowing what the outcome of the grievance process may be, and that this action is being taken at this time in order to be consistent with the present formal position of the Board and AAUP time requirements in matters of this kind. Should the Educational Policy Committee decide to recommend that you be granted tenure, and should the Board of Trustees concur with their recommendation, then of course, it will supersede any previous action taken by the Board.

Sincerely yours,

Walton H. Simpson, President
Board of Trustees of
Delaware State College

WHS:sra

cc: Members of the Board of Trustees

EXCERPTS FROM ORAL ARGUMENT IN THE DISTRICT COURT FOR THE DISTRICT OF DELAWARE ON DEFENDANTS' MOTIONS FOR DISMISSAL, DATED JUNE 16, 1978

MR. FLETCHER: Yes, your Honor.

Going to that area then concerning Title VII and the allegation of continuing discrimination, it would be the defendants' contention that given the holding of the United States Supreme Court in United Airlines v. Evans, that simple little isolated incidences of alleged discrimination in and of themselves by particular persons does not constitute a continuing pattern of discrimination, though there may be effects of the decision made that may go on into the future.

For instance, it would be our contention that any time a person is terminated from employment until the person is re-employed or until he comes into Court and has his rights remedied, there would be a continuing effect of which he would be injured by. And I think

the Court, in United States v. Evans, considered that and noted that it could not look beyond the actions themselves.

If we were dealing with a class of persons where the allegations existed that there were established policies that had been applied over the years to different groups of people, at all different times, then I think you would have a claim for a continuing violation of a person's rights.

But when there is one simple decision made, for instance in this case a denial of tenure, though the effect of that is that the person in the future isn't going to have tenure, we would maintain that that is one simple isolated action and decision, and that any cause of action accrued at that time.

In Evans the person was denied the right to have back pay and certain promotions. The decision was made on one particular day, yet the effects of that

decision went on obviously into the future since she was not receiving the amount of money she could have received in a higher position or with greater seniority. But the Court indicated that it would not consider that to be a continuing violation which would possibly toll the applicable statute of limitations in Title VII.

THE COURT: But I understand the plaintiff to be saying that United v. Evans, the recent Third Circuit case, does not present the same question that this case presents, that the United case and my old Jenkins case, I think it was, hold that if you have no violation within the statutory period, you can't recover simply on the grounds of the effects of a violation occurring before, not within the period of a present effect.

Perhaps that would be applicable here if all the complaint said was, "I was denied tenure for discriminatory reasons

in March or April of 1974." But I understand the plaintiff to say, "That is not all we allege, however. We allege that there was a continuing course of discriminatory acts from 1970 to 1975." They are a little bit vague on when those happened, and some of them obviously happened before the tenure decision. But assume that as a matter of fact there were discriminatory actions that were taken within the period, the three-year period, and within the 180-day period. I understand plaintiffs to say that in effect revives and allows you to get an amendment for all acts in that course of conduct, whether they occurred within the period or before the period.

Now, do you have some authority that you think is contrary to that proposition?

MR. FLETCHER: Well, I would think that the United Airlines case is contrary to that. I think that one of the under-

lying assumptions on a continuing pattern claim is that the same types of activities that have happened in the past are now continuing in the future.

I would think that if one type of decision were made in the past that was totally unrelated to another incident that happened six months later, that to simply say that that is discrimination and therefore there is a continuing pattern, that is not what the cases describing a continuing pattern of discrimination have found it to be.

I believe it is a continuing practice such as -- I think the complaint in this case might say something like, On one day he wasn't allowed to have a classroom, or on one day someone talked back to him, and then he was also denied tenure three years ago. I don't think those things have a relationship to one another that would constitute a continuing pattern. And that

would be one of the bases to distinguish the continuing pattern from the incidents that are alleged in this case.

Your Honor mentioned the Jenkins case. From my reading of the case it indicated that there were a lot of different individual activities that occurred, or at least are alleged to have occurred by the two complaining plaintiffs in addition to the fact that they were actually terminated from employment. I believe that they made claims such as their work conditions weren't the same as others or that they were having trouble with the shop stewards on and off.

THE COURT: But there wasn't any employment discrimination against them after they were discharged, was there?

MR. FLETCHER: I think that is correct.

THE COURT: I don't remember the case, but I assume that is the case.

MR. FLETCHER: That is correct. They weren't after they were discharged. But it would seem to me that the plaintiff at least would have to show in the present case, given the pleadings, particular acts of discrimination occurring after October 7, 1974, to even open up a Title VII action.

The complaint was filed on April 4, 1975, and moving back 180 days I come to October 7, and I don't believe there is anything in the complaint that a fair reading of the complaint indicates there was anything that happened after October 7, 1974, that would allow the Court to consider Title VII, and I would think that the Court would have to take a look, if there is any action -- if they amended their complaint to allege some type of activity after October 7, it would be our contention that it has to have some type of relationship to the acts that

happened beforehand before they would be entitled to relief for the acts that happened before October 7.

I think the Evans case indicated that a person is free to treat actions that they take against one if it is not brought to the attention of D.C. within the time limits as a legal act. And we would maintain that in this case, when you are having isolated decisions, such as a denial of tenure, which was made in 1974, that if he had an incident with another teacher, even with his Chairman a year later, that there is no relationship there that would allow the Court to consider -- that would open up the entire five-year history again. That would be our contention.

I think that the Evans case would support that. She may have had other problems in Evans and the Court was not

going to allow them to consider anything that went to her termination because it wasn't timely filed.

It is difficult for me to give you an example, your Honor, in that we have no examples of discrimination occurring after October 7, 1974, in the pleadings that I can read from them. I think the Meyers case that we cited indicated that when you have discrimination, if the discrimination decision has already been made, a re-application for the person to decide it again is not enough to open up the claim and allow it to come in, even though the original denial would have been barred by the statute of limitations.

So the actions that are alleged in the complaint where the plaintiff says in December 1974, he asked the President to reconsider his tenure status, I don't think the mere reaffirming of a decision

that was already made, which he is complaining of, would be sufficient to reopen the case.

Of course, we also contend that the President has no authority to change the decision of the Board of Trustees, but the allegation was that he went to the President and asked that even though the tenure decision had been made, that he change it. And I wouldn't think that that would be sufficient to open up the case again. I think the Meyers case supports that.

THE COURT: Is not the continuing violation theory or rationale applicable in 1981 and 1983 actions as well as Title VII actions in connection with the application of statutes of limitations by analogy?

MR. FLETCHER: I think it probably would, your Honor. I can't think of any reason that if the type of conduct that is

being complained of is of a type where the Court has determined that the statute of limitations doesn't run on it, then perhaps it would be analogous, although I would point out that this Court in the Blake case recently had an opportunity to talk about civil conspiracies, and there were specific actions complained of which were outside the applicable statute of limitations, and therefore the initial act was barred, and the Court noted that the effects and damages of this may go into the future, but as far as determining what statute of limitations applies, it is going to apply the one from the overt acts.

So that would indicate perhaps that the continuing violation is not to be as broadly construed in a regular cause of action under a Civil Rights statute as opposed to a Title VII, which most of the courts have recognized to be extremely proper in giving the relief allowed.

THE COURT: Or, conversely, perhaps the Blake analysis may help us in applying the continuing violation rule. I mean, what I understood the judge to say in that case was that you cannot collect in a civil conspiracy case where you have got a continuing series of conduct, you can't collect damages for any overt act that did not occur within the period.

MR. FLETCHER: Yes, your Honor. Well, I think that we would not argue that point. Anything outside of the statute could not be recoverable. In other words, it seems to me the statute of limitations is barring the remedy, and that is what we are claiming, that the acts outside of the statute, there is no remedy for them.

THE COURT: But if you apply that to this case, the argument about a continuing pattern of discrimination, it would mean that assuming that some violations did occur within the period and

therefore that the plaintiff's suit is not barred, the plaintiff might seek injunctive relief and damages for violations occurring within the statutory period; nevertheless, he could not recover damages or get reinstatement relief for acts that occurred before the period, that is, for the decision not to renew and not to grant tenure. But I am not sure that that is consistent with the way the cases have applied the continuing discrimination doctrine.

It seems to me the legal issue that is posed here is, assuming that there is a continuing course of discrimination and there is a violation or violations within the statutory period so that you have a claim you can press, you can come into Court and you can seek injunctive relief, whether or not in that suit you can recover damages for the effects of violations that occurred prior to the period.

MR. FLETCHER: I see what you are saying, your Honor, and we would contend you could not, on the basis of the Evans case, which held that the legal effect of acts not within the period bar that they are legal acts, and that therefore if they are legal acts, there is no right to a remedy. That would be our position.

THE COURT: They did say that. I am not sure the Court held that. I mean, it was a different case -- I think you would agree with me -- it was a different case because there was no violation within the period, in the Evans case.

MR. FLETCHER: Your Honor, at this point I would not agree on the basis that I haven't seen a violation alleged in the complaint within the applicable period, as far as Title VII is concerned. That would be our contention.

THE COURT: And you say that is jurisdictional, so we ought to make,

regardless of whether the allegations of the complaint, the general allegations that there was discrimination between '70 and '75, would otherwise be sufficient, that is the jurisdictional point and we ought to make the plaintiff put his stake down and tell us what act, if any, in fact occurred after September 9, 1974, and what act happened after October 7 of '74 as far as the Title VII is concerned; is that right?

MR. FLETCHER: As far as Title VII is concerned, I would agree as far as the date of October 7 is concerned. I am not sure I understand the September 9 date as far as Title VII is concerned.

THE COURT: Well, you told me that the theory of continuing discrimination might apply in the case of 1981, '83 and '85 claims.

MR. FLETCHER: Oh, yes, your Honor.

THE COURT: And assuming a three-year statute of limitations, September 9, 1974, would be three years before the filing.

MR. FLETCHER: It would, your Honor. Of course, the defendants have taken a poisition that the applicable statute of limitations, if there is an action even alleged, would not be a three-year statute of limitations.

THE COURT: I can understand why you didn't pick up my reference, that is right. Go ahead.

MR. FLETCHER: Is there any additional discussion you wish to hear on the Title VII portion? I think I have outlined our position on that.

THE COURT: Is there a formal grievance? The briefs talk about grievance procedure. Is there a formal grievance?

MR. FLETCHER: Yes, there is, your Honor. There is an outlined grievance procedure.

THE COURT: Is it in a collective bargaining agreement?

MR. FLETCHER: I don't believe it is.

THE COURT: Faculty handbook?

MR. FLETCHER: Yes, a handbook. It is outlined basically the same way as the tenure rules and regulations are outlined that we attach to one of our briefs. The grievance procedures would be outlined in a handbook similar to that.

THE COURT: What is the final step in the grievance procedure?

MR. FLETCHER: As I understand it, your Honor, it would be the hearing before the Educational Committee. I believe that is what they are called.

THE COURT: Is the grievance procedure in this record in this case?

MR. FLETCHER: Your Honor, there is a small reference to the hearing given to the plaintiff by the Grievance Committee, or Educational Committee, which occurred in May of 1974. We contend that there are absolutely no allegations in the complaint that challenge in any way the grievance procedure or the hearing that was given the plaintiff at that procedure.

The record at this time does not indicate that the procedure was in fact a hearing that was transcribed, at least by tape recording, that the plaintiff was there with counsel --

THE COURT: The purpose of my inquiry was to find out whether the Educational Committee's decision was the final step of the grievance or whether a full Board reconsideration was the final step in the grievance procedure.

MR. FLETCHER: The decision of the grievance procedure Board would be sent on

to the Board of Trustees. The Board of Trustees then acts as it wishes in light of the decision of the Grivance Committee.

THE COURT: All right. I think that exhausts my questions, but I don't want to cut you off if you want to add anything.

THE COURT: So that I won't forget it, why don't we start with his last point. Is there really any reason why the members of the Tenure Committee ought to be in this suit in their individual capacities?

MS. HARRIS: Yes, your Honor, I think there is. If the concern is with respect to the statute of limitations, I believe that the question of when Dr. Ricks knew or had actual knowledge or should have reasonably had knowledge of the nature of what he perceives to be the conspiracy against him is one yet to be determined.

The complaint that was drawn was drawn after all of this had occurred and based on knowledge that he then knew at the time that he met with me and we prepared the complaint. Much of the information that came to Dr. Ricks' attention -- and I am not suggesting to the Court exactly which of the information it is; I don't want to mislead the Court in that was -- came to his attention after he visited the Equal Employment Opportunity Commission, after it had completed its investigation in this matter, that he made two visits to the EEOC. One of them was in November of 1975, to be interviewed by the investigator. The second was in June or July, perhaps May of 1976.

If you assume the two-year statute of limitations ran from that second visit when he did in fact review documents, then he may well be within the period provided

for by the statute of limitations. For that reason I think it is premature to dismiss that claim on that basis of the statute of limitations.

There is one other thing I would like to say about the conspiracy claim, the conspiracy allegation, that was raised that has not been referred to, and that is the question of whether the individuals were capable of conspiring. The cases that I cited in my brief were cited for the purpose of showing -- they are not directly on point, but they are suggestive of the kind of inquiry the Court should make to determine whether a conspiracy is capable of occurring.

Since the time of the filing of the brief a case has been decided by Chief Judge Northrop in Maryland. The name of the case -- I presented copies to counsel this morning and I apologize for not having presented it earlier but it just

appeared in the FEP Reporter System -- it is Hodgin v. Jefferson, decided March 13, 1978, the District of Maryland. Judge Northrop finds in that case where he refuses to dismiss a conspiracy claim involving employees of a corporate defendant on the grounds that perhaps if their actions were authorized they might be incapable of conspiring; if their actions were unauthorized, the question remains open. And for that reason he refused on a preliminary basis to dismiss it.

I would suggest the same reasoning would apply in this case to that claim.

I would like to go back to the Title VII claim and the question of continuing violations. I believe that the complaint alleges a course of conduct on the part of the defendant that constitutes a continuing violation, and with respect to the Defendant College's contention that no act

occurred after 10/7/74 -- I believe that is the date -- that was alleged to be discriminatory, I believe that the allegation that Dr. Ricks was discharged effective June of 1975 is that act. That act having occurred after 10/7/74, I believe that it is the logical consequence of the continuing pattern, or the logical following of the continuing pattern of discrimination against Dr. Ricks.

The Court earlier asked whether there was any act after, I believe, 9/12/74 --

THE COURT: 9/9/74.

MS. HARRIS: 9/9/74. There was a decision, I believe a letter of the Educational Policy Committee of the Board of Trustees issuing its decision -- I believe that letter is dated 9/12/74.

So with respect to whether there was any act that occurred at that point in time, there was. The action of the Board

of Trustees would have necessarily, as the procedure described by Mr. Fletcher would indicate, would have followed that.

THE COURT: As far as the other incidents or episodes referred to in the complaint are concerned, other than the termination of employment in June of '75, did any of those instances occur after October 7 of '74 other than the instance of termination? There was a letter, I believe, from Dr. Mishoe in January of '75 which indicated the decision of the Board of Trustees.

Now, as to when that decision was made, I have no document indicating that exact date. I was going to say that I believe the nature of continuing conduct is similar to the conduct that your Honor found to be continuing in the case of Stallings v. Container Corporation that was recently reported in the FEP series, that in fact there was a pattern of

conduct engaged in against the individual plaintiffs and that there was in fact an act which occurred within the period of time of the filing of the charge and notwithstanding the fact that there was actually no position to which the plaintiffs could have been promoted within the time period in that instance -- which I believe was 210 days of the filing of the charge -- the fact that that practice continued and the plaintiffs were still subject to that conduct led the Court, I believe, to conclude that the conduct was continuing in nature and found the violation. And the Court also granted relief going back to years prior to the filing of the charge.

I believe that when you are talking about this kind of conduct on the part of the college, you are talking about a similar kind of conduct. Dr. Ricks' real complaint ripened and became a reality on

the date of his discharge. One might say that it would be desirable to have tenure because of the permanency of it. But if Dr. Ricks had never actually been discharged, the absence of tenure itself, the denial of tenure that occurred in the earlier stage is not necessarily the direct injury causing it, the loss of his position on June 1, 1975.

THE COURT: Well, how about June 26 of '74, when he was notified that he would be given a terminal --

MS. HARRIS: That notice, that letter from the Chairman of the Board, I believe Mr. Simpson, indicated that it was given as a matter of form because the Educational Policies Committee still had his matter under consideration and had the power to decide to grant him tenure -- excuse me, to recommend to the Board of Trustees that he be granted tenure. So the question of tenure to Dr. Ricks was still open at that time.

I wanted to comment with respect to the 1981 matter, and I don't want to belabor the point, but I think the cases I have cited indicate there is some racial connection to the national origin discrimination alleged that such a claim is redressable under 1981, and I think it is important that the Court should know that Dr. Ricks alleged in his complaint and had alleged in his EEOC charge that he is a Liberian. To him by definition a Liberian is someone who is racially black. One is not a Liberian unless one is, I suggest to the Court, not closer in connection to national origin connection discrimination than to emphasize in this case.

THE COURT: I am not quite sure what you are telling me. The complaint seemed deliberately -- it is alleged that he was black -- deliberately and precisely drawn to make a claim of national origin

discrimination. Are you telling me that Dr. Ricks is also making a claim of racial discrimination?

MS. HARRIS: No, I am not saying that. I am saying I believe the cases hold that national origin discrimination is redressable under 1981 if racially connected, and I am simply saying the allegation in the complaint was he was a black Liberian -- it may have said "male" -- but a black Liberian. I am saying to you that to be a Liberian is to be racially black and that you couldn't get closer in terms of national original discrimination, you couldn't make that closer racial national origin connection than you could in this case.

Some of the cases have been Hispanic cases, and the courts have decided -- and I believe I have cited two in my brief -- that have actually made decision and decided that 1981 violations had occurred.

One was Castro v. Beecher, the other Davis v. County of Los Angeles, both public employment cases, where the plaintiffs were in one instance Spanish surnamed and in the other instance allegedly Hispanic the Court found there violations of 1981.

The other cases' discussion of whether you can find a 1981 violation on the basis of national origin indicate that you can if it is connected, if it is closely affiliated with race. And I am simply saying to the Court that in this case that close connection does exist. I am not asserting that he is alleging a race discrimination claim.

With respect to the other claims, I believe that the Title VII claim is one alleging a continuing pattern of discrimination which continued up to the date of Dr. Ricks' actual discharge in June of 1975. He filed his charge in April of 1975 with the Equal Employment Opportunity

Commission. I believe that the Equal Employment Opportunity Commission determination, which the defendants have received a copy of, indicates the scope of the investigation of that matter and that they looked at it as a pattern of discrimination and their finding -- I am not offering it, I am not suggesting to the Court that it be bound by that finding -- I am simply saying that they looked at it in such a way that would lend itself to be conceived of as a pattern or practice of discrimination. The pattern and the practice with respect to a Title VII claim came to a head at the time of his discharge.

I think that the other claims arise out of the same facts, the 1983 claim and the 1985 claims, arise out of the same facts of Title VII that the 1981 claims arise out of. And I think at this point it is premature to dismiss those claims on

the basis of their being barred by the various statutes of limitations because I don't think that the Title VII claim is so barred, and I believe that the Court could at a later point, after discovery is concluded, issue such an order, whether that order be to dismiss certain of those claims because they are in fact barred or to shape relief of the outcome if relief is in order or to take those various facts into consideration.

I am asking that the Court not now dismiss those claims on the basis that they are barred by the statutes of limitations because I believe the Title VII claim is still viable and a continuing one.

THE COURT: I am sort of troubled -- though I read some cases that appear to me to say so, I am troubled by the idea that when you have a continuing series of violations over a long period of

time, and one occurs within the statutory period, that it revives the claims for all prior violations, revives those claims just as though there was no statute of limitations, and I have trouble reconciling that, because it seems inconsistent with the purposes to be served by the limitations statute.

Now, when you are talking about equity claims, if there is a continuing pattern of racial discrimination, for example, and there is an act that occurs within the period, and it appears to the Court that there is a threat of future violation, there has never been any limitations period. Limitations are technically not applicable and of course any Court is going to enjoin a promotional scheme or any other kind of employment practice that discriminates against employees that are going to be there and are still suffering under it.

I am having trouble coming up with a hypothetical -- I am concerned about a rule -- is it the law that if you have a continuing series of discriminatory acts and one happens within the 180-day period, that you can collect damages resulting from another act that occurred prior to the 180-day period?

MS. HARRIS: Yes, going back two years, with a proviso that it not go back beyond two years prior to the filing of the charge.

THE COURT: Now, how about a 1983 claim with, let's say, a three-year statute of limitations? You have got a series of acts, discriminatory act, violations, but only one within the three-year period. Now, clearly the plaintiff doesn't get thrown out of Court, but can he or she collect damages for the effects of a violation occurring more than three years earlier?

MS. HARRIS: I believe that the plaintiff could because I think that the question that has to be asked with respect to the statute of limitations is, is the cause of action barred rather than is the right to relief barred, and I think that if the violation continued and the cause of action is outstanding, that the plaintiff in that case is entitled to the relief, all the relief that would redress whatever that cause of action is, and the cause of action was viable because it was in existence within the statutory period.

THE COURT: I haven't found any law on it. There is, of course, law that says you can go back -- in a Title VII case you can go back to the two-year period.

Well, let me ask you this: Suppose your client had come to the Clerk's office of this Court in March of 1974 with a paper that said that plaintiff hereby

alleges that he was denied -- well, let's make it June 26; I don't know that it makes any difference -- let's make it April; and he says, There has been a decision to deny me tenure because of my national origin. Would the defendants have any basis for urging the Court to tell him to go away, he wouldn't have a right to be there?

MS. HARRIS: I believe it would. I believe that the defendant would have the right to say that that decision, as of the date you indicated, that decision was being considered by the authorities who had power to ultimately make that decision, and that it was only at the time that that decision was actually made when the Board would say either Yes you do get tenure or No you do not get tenure -- that that decision is final.

THE COURT: Let me make sure I do have the facts straight. The Board did

vote in April of '74 to accept the recommendations of the Tenure Committee and not to grant tenure. Then the grievance procedure started. Would you straighten me out?

MS. HARRIS: The grievance procedure, as I understand it -- I don't think that there is a document in the record that fully outlines it -- what happened with respect to Dr. Ricks was that the request for grievance -- I am not sure you can call it grievance procedure -- the request for consideration by the Board was made prior to that letter from -- and I am not certain -- I would have to look at the record -- that it is a statement that the Board decided not to grant tenure. But assuming it is, his request pre-dated that, and the only matter at that time was the scheduling of a hearing, that educational policy hearing, and that Educational Policy

Committee had the power to recommend that tenure be granted or denied. That recommendation was made in September, and sometime after that the Board made its decision, after September of '74.

I think what is clear here is that the Board had the power and did exercise the power to decide to grant Dr. Ricks tenure after that particular letter. I think the college could have said at that time, notwithstanding that letter, We are considering this matter. The decision is yet to be made. Dr. Ricks has requested this consideration.

THE COURT: There is another little bit of factual confusion that I want to make sure I straighten out. There is an allegation in the complaint that I read saying that the Plaintiff was discharged on June 1, of 1975. That is not accurate, is it?

MS. HARRIS: It is effective.

THE COURT: The briefs talk about the contract expiring and his employment terminating on June 30 of '75. I take it that is what happened?

MS. HARRIS: Yes, yes, that is correct.

THE COURT: How do you distinguish the Blake v. Delaware City case?

MS. HARRIS: As I understand that case, first of all, it was not, as I understand it, a discrimination case, and it was one where there were a series of isolated acts or factual events which the plaintiff lumped together and said this was a conspiracy. I think that that is different here. I think everything here arises clearly out of a claim -- comes under the aegis and is protected, is the kind of conduct against which the plaintiff is protected from harm by Title

VII. I just think that the events are much more closely connected and a different set of facts.

THE COURT: Stallings, of course, was a promotion case, and if you are an employee in a sense you are constantly being adversely affected by a promotional system that discriminates. Isn't a denial of tenure and the issuance of a terminal contract something different?

MS. HARRIS: I don't believe so. I think it is analogous to a situation if you had a promotion system, for example, that was dependent on evaluations of employees by supervisors, and the employees got bad evaluations, that that claim for discrimination would not ripen until such time as a promotion was available and was denied.

I think it is analogous to that situation, that Dr. Ricks had the series

of events that occurred to him that put him in a position to be fired, because of the absence of tenure in June of 1975.

I don't know if that response to your question, but that is the way I perceive it.

THE COURT: All right. I don't have any further questions. But you are --

MS. HARRIS: I think that I have covered that which I wanted to cover. I believe the Defendant College has a copy of the EEOC determination. I wanted to pass one up, again not for consideration of the substance of it but rather for the scope of it, in support of the proposition that it is continuing.

THE COURT: Thank you.

Do you have anything in rebuttal, Mr. Fletcher?

MR. FLETCHER: Just a few comments, your Honor, if I may.

One of the issues that was discussed just a moment ago concerned the grievance procedures, and I believe the Court's question was whether or not Dr. Ricks could have come into the Court or into the Clerk's office and filed a complaint of discrimination back in March or April of 1974, for the decision to terminate him from employment. I believe plaintiff maintained that he couldn't, and indicated that the basis why he couldn't was because of the existence of the grievance procedure, and that there wasn't any final --

THE COURT: I am not sure whether she said that -- I thought she said that he couldn't because there wasn't a final decision.

MR. FLETCHER: There wasn't a final decision, and I think the reason why there wasn't a final decision is because there

was still the grievance procedure to go through and then another decision by the Board. I think that was her reasoning. And in light of that, I would offer to the Court the case of International Union of Electrical, Radio and Machine Workers v. Myers, United States Supreme Court case that I have cited at 50 Lawyers Edition 2d 427, where the Court did discuss the effects of grievance procedures and the filing of a complaint with the EEOC, and I believe that the Court indicated that the statute of limitations for an EEOC complaint is not tolled by the mere existence of a grievance procedure.

THE COURT: When was the Myers case decided?

MR. FLETCHER: 1976 -- December 20, 1976.

THE COURT: Go ahead.

MR. FLETCHER: And on that basis, your Honor, as far as the grievance

procedure is concerned, we don't think that that does toll the beginning of the cause of action and the necessity to file the same.

It is a similar reasoning to the reasoning in I believe it is the Johnson case in the Supreme Court where the actual grievance procedures within the EEOC do not toll the running of the statute on a 1981 action.

So I think that that is consistent and that we would claim that the decision was made in March.

I would also bring the Court's attention to the Aumiller v. University of Delaware case -- I am sure the Court is familiar with it -- but in the factual situation they had a grievance procedure and I believe the Court never really decided what particular time period would be the determining one, but it did indicate that it found a cause of action

to exist prior to the initiation of the grievance procedures, though the contract that he had was going to run to the end of that year. He was being informed of his termination, he had time to file a grievance, and there is still time on his contract. The Court held that a cause of action arose during that contract year, and I believe the judgment was awarded on what was done during that year. So I would again suggest that it would indicate that the cause of action is not dependent on the completing of the grievance procedures.

We would also indicate that there is nothing in the complaint that challenges the grievance procedures. Nowhere has any of the individuals or the Educational Policy Committee itself, the hearing it conducted and the decision it made has not been challenged in any way claiming that

that decision was discriminatory. And that decision was that the person should not be given tenure.

The other comment made by plaintiff concerned the continuing violation pattern, and she indicated that the determining date was June 1975, because that was when the plaintiff was discharged. We maintain that there was a contract that terminated in June of 1975, which was entered into and fully performed. The fact that there were no additional contracts after June of 1975 was not the effect of the contract that ran through June but rather was the effect of the decision not to grant tenure, which was back in March or the summer of 1974. Therefore the fact that you didn't have a job after June is merely an effect of a decision that was made many months before and is not part of the continuing violation. It is nothing more than the

effects of being denied a promotion, as in Evans, they were denied the promotion, so in the future she wasn't receiving additional compensation.

With those comments, I close, your Honor.

EXCERPTS FROM RESPONDENT RICKS' BRIEF IN THE COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT OF THE ISSUES

I. Did the District Court err in deciding that the critical date for purposes of calculating the statute of limitations governing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5 et seq., as amended, was the date when plaintiff was notified of his termination contract by the Board of Trustees of the College rather than the date his employment ceased.

II. Did the District Court err in deciding that the critical date for purpose of calculating the statute of limitation governing 42 U.S.C. §1981 was the date when plaintiff was notified of his termination contract by the Board of Trustees of the College rather than the date his employment ceased.

B. THE DISTRICT COURT ERRED IN DECIDING THAT THE CRITICAL DATE FOR PURPOSES OF CALCULATING THE STATUTE OF LIMITATIONS GOVERNING 42 U.S.C. §1981 WAS THE DATE WHEN PLAINTIFF WAS NOTIFIED OF HIS TERMINATION CONTRACT BY THE BOARD OF TRUSTEES OF THE COLLEGE RATHER THAN THE DATE HIS EMPLOYMENT CEASED.

Plaintiff does not dispute that the statute of limitations applicable to plaintiff's §1981 claim is three years and that 10 Del. C. §8106 is the appropriate statute. However, plaintiff believes the District Court erred in holding that the statute commenced to run on June 26, 1974,

when· plaintiff was notified of his terminal contract (A-91). Although Title VII and 42 U.S.C. §1981, provide separate, independent remedies for employment discrimination, the same facts may give rise to those separate and independent claims. Johnson v. Railway Express, 421 U.S. 454 (1975). Plaintiff believes that the arguments made above with respect to the timeliness of the charge in April, 1975, filed under Title VII are relevant and applicable with respect to his claim for relief under 42 U.S.C. §1981 as well.

Plaintiff's §1981 claim alleges national origin discrimination. Among the alleged violations of that statute is one that plaintiff was discriminatorily discharged from his employment. On the basis of Egleston, supra, and Noble, supra, his date of discharge clearly was the final day of his employment contract, June 30, 1975. Plaintiff believes that any §1981

claim to be filed based on this allegation had to be filed within three years of that date, or before June 30, 1978. As plaintiff's court complaint was filed in September, 1977 (A-2), it is apparent that it was filed within the three year statute of limitations provided for in 10 Del. C. §8106. Accordingly, plaintiff urges this court to reverse the District Court's holding that this claim is time barred.

ORDER OF UNITED STATES SUPREME COURT GRANTING PETITION FOR WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES

No. 79-939

Delaware State College, et al.,

Petitioners,

v.

Columbus B. Ricks,

Respondent.

ORDER ALLOWING CERTIORARI. Filed February 19, 1980.

The Petition herein for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit is granted, limited to questions 1, 2 and 3 presented by the Petition.